

August 5, 2005

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DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: James C. Flynn

Date of Filing: July 8, 2009

Case Number: TFA-0322

On July 8, 2009, James C. Flynn filed an Appeal from a determination issued to him on June 24, 2009, by the Department of Energy's Office of Information Resources (DOE/HQ). That determination was issued in response to a request for information that Mr. Flynn submitted under the Privacy Act (PA), 5 U.S.C. § 552a, as implemented by the DOE in 10 C.F.R. Part 1008. Mr. Flynn asks that DOE/HQ conduct an additional search for documents responsive to his request.

I. Background

Mr. Flynn filed a request for information in which he sought his personnel, medical, employment and radiation exposure records while employed at the Pinellas Plant in Pinellas, Florida from 1959-1963. On June 24, 2009, DOE/HQ issued a determination letter which stated that the Office of Legacy Management (LM) of the DOE conducted a search of the following systems of records established under the Privacy Act: DOE-5 "Personnel Records of Former Contractors Employees," DOE-33 "Personnel Medical Records," and DOE-35 "Personnel Radiation Exposure Records." DOE/HQ further stated that the search of DOE-5 and DOE-35 did not locate any responsive records. However, a search of DOE-33 located three responsive documents. These documents were released to Mr. Flynn in their entirety. On July 8, 2009, Mr. Flynn filed the present Appeal with the Office of Hearings and Appeals (OHA). In his Appeal, Mr. Flynn challenges the adequacy of the search conducted by LM. *See* Appeal Letter. He asserts that responsive documents may be found in an additional location and asks OHA to direct DOE/HQ to conduct a new search for responsive documents.

II. Analysis

Under the Privacy Act, each federal agency must permit an individual access to information pertaining to him or her which is contained in any system of records maintained by the agency. 5 U.S.C. § 552a(d). Unlike the Freedom of Information Act (FOIA), which requires an agency to search all of its records, the Privacy Act requires only that the agency search systems of records.

However, we require a search for relevant records under the Privacy Act to be conducted with the same rigor that we require for searches under the FOIA. *See, e.g., Carla Mink*, 28 DOE ¶ 80,251 (2002). ^{*/} Accordingly, in analyzing the adequacy of the search conducted by LM, we are guided by the principles we have applied in similar cases under the FOIA.

We have stated on numerous occasions that a FOIA request deserves a thorough and conscientious search for responsive documents, and we have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Butler, Vines and Babb, P.L.L.C.*, 25 DOE ¶ 80,152 (1995). The FOIA, however, requires that a search be reasonable, not exhaustive. “[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought material.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord, Weisberg v. Department of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). The fact that the results of a search do not meet the requester’s expectations does not necessarily mean that the search was inadequate. Instead, in evaluating the adequacy of a search, our inquiry generally focuses on the scope of the search that was performed. *Information Focus On Energy*, 26 DOE ¶ 80,240 (1997).

In reviewing the present Appeal, we contacted officials in LM to ascertain the extent of the search that had been performed and to determine whether any other documents responsive to Mr. Flynn’s request might reasonably be located. Upon receiving Mr. Flynn’s request for information, LM conducted an electronic search of several of its systems of records using personal identifiers such as the requester’s name, date of birth, badge number and work location. *See Record of Telephone Conversation Between Pamela Watson, LM, and Kimberly Jenkins-Chapman, OHA* (August 3, 2009). LM stated that this electronic search should have located any responsive documents in federal records centers. As a result of this search, LM located three documents which it classified as “general correspondence documents.” These documents were released to Mr. Flynn in their entirety. No other documents regarding Mr. Flynn were located. Given the facts presented to us, we find that LM conducted an adequate search which was reasonably calculated to discover documents responsive to Mr. Flynn’s request. Accordingly, Mr. Flynn’s Appeal should therefore be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by James C. Flynn, OHA Case No. TFA-0322, on July 8, 2009, is hereby denied.
- (2) This is a final Order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552a (g)(1). Judicial review may be sought

^{*/} All OHA decisions issued after November 19, 1996 may be accessed at <http://www.oha.gov/foial.asp>

in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

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